

ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**JOHN D. PERKEY and THERESA M.
PERKEY,**

Plaintiffs

vs.

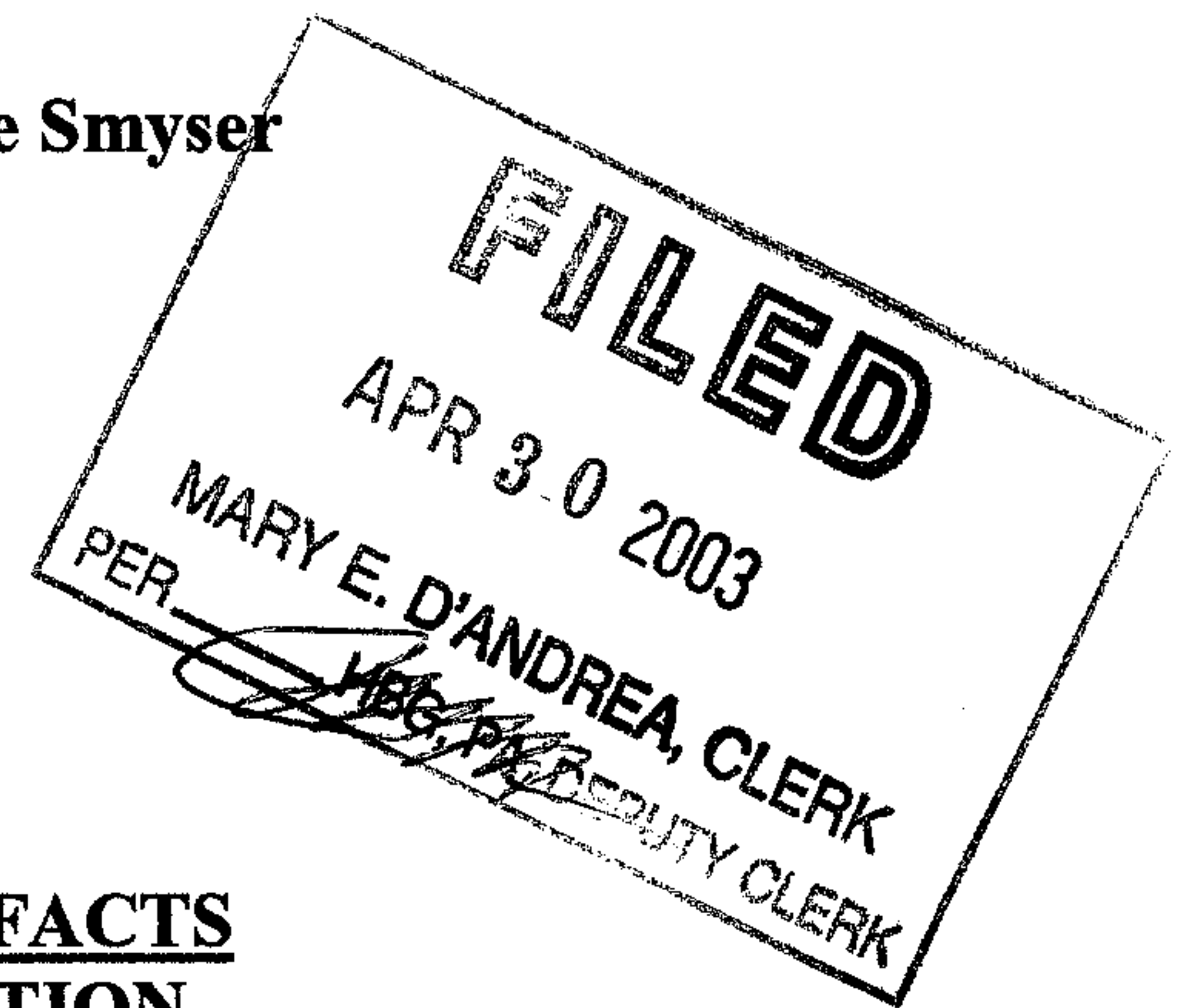
**RELIABLE CARRIERS, INC.,
DANIEL JOSEPH BEMBEN and
KENT,**

Defendants

CIVIL ACTION NO.1:CV-00-1639

JURY TRIAL DEMANDED

Magistrate Judge Smyser



**COUNTER STATEMENT OF MATERIAL FACTS
IN OPPOSITION TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

1.

The facts set for the Defendants' Statement of Material Facts are correct.

2.

The workers' compensation benefits received by Plaintiff, John D. Perkey, were paid by ABF Freight System, Inc. which is self insured. See Exhibit "C" of Defendants' Statement of Material Facts.

3.

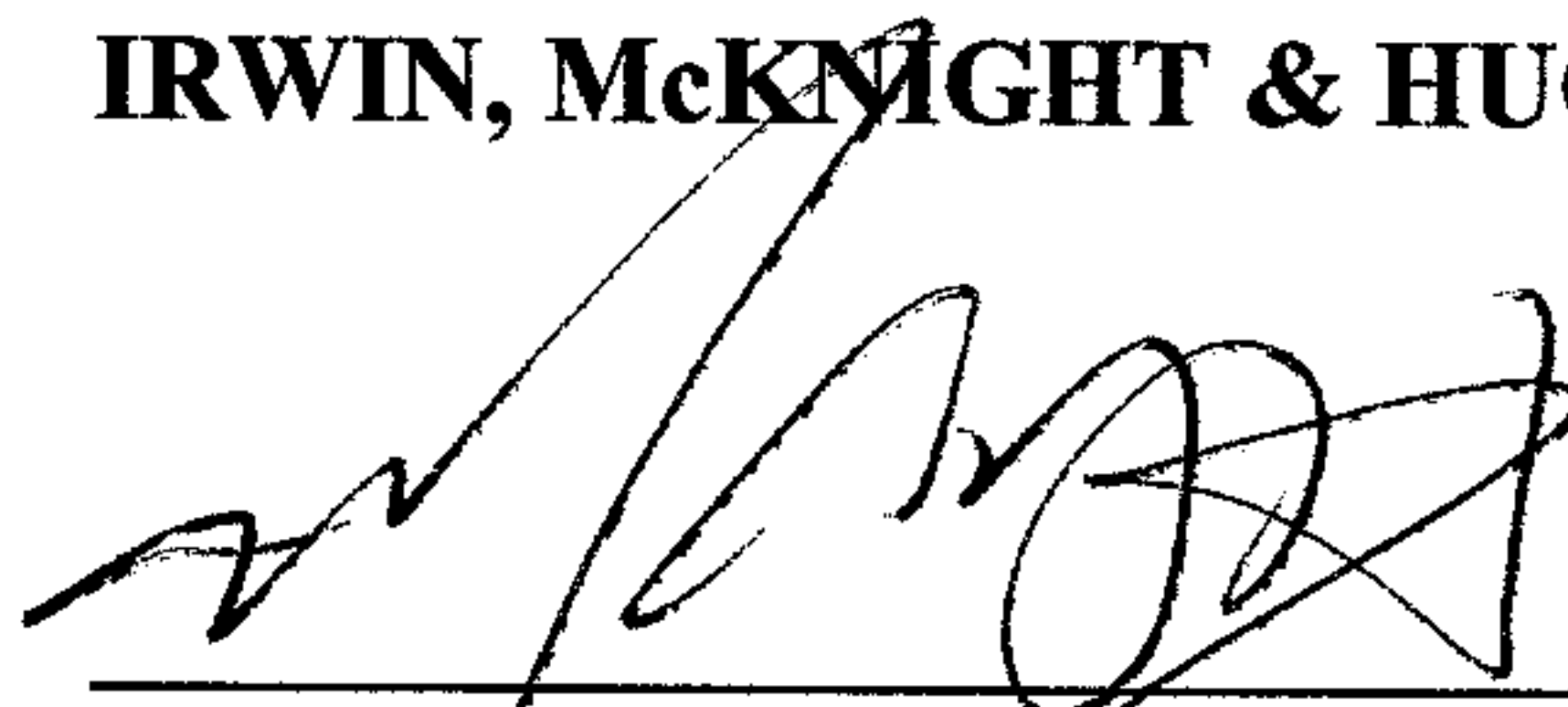
ABF Freight System, Inc. has paid total compensation of \$181,096.62 being \$128,168.00 for wage benefits and \$52,928.62 in medical benefits. See attached Exhibit "A".

4.

The Plaintiff has a subrogation interest in repayment of these benefits to ABF Freight System, Inc. in the third party action against the Defendants in this action before this Court.

Respectfully submitted,

IRWIN, McKNIGHT & HUGHES



Marcus A. McKnight, III, Esquire

Attorney I.D. #25476

60 West Pomfret Street

Carlisle, PA 17013

(717) 249-2353

Attorney for Plaintiffs

John D. Perkey and

Theresa M. Perkey

Date: April 30, 2003

EXHIBIT A

Farrell & Ricci, P.C.

Attorneys and Counselors at Law
4423 North Front Street
Harrisburg, PA 17110

Michael A. Farrell
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April 15, 2003

*also admitted in New Jersey

Marcus A. McKnight, III, Esquire
Irwin, Irwin & McKnight
60 West Pomfret Street
Carlisle, PA 17013

RECEIVED

APR 17 2003

IRWIN, MCKNIGHT & HUGHES

Re: John Perkey v. ABF Freight System, Inc.
Bureau Claim No: 2018862
Our File No: CAR-125

Dear Marcus:

The amount of my client's subrogation lien, up to the date of April 4, 2003, is as follows:

<u>Indemnity</u>	<u>Medical Payments</u>
\$128,168.00	\$52,928.62

I enclosed with this letter a copy of the computer printout showing the indemnity payments made to Mr. Perkey.

I have requested of my client to obtain from the liability department copies of any accident report or investigative report concerning the accident contained in their files. I will provide you with a copy of those reports, if any, upon receipt.

Thank you for your attention to this matter.

Very truly yours,

Michael A. Farrell

Michael A. Farrell

MAF/dab
enclosure

MAP030 WC CHECK INQUIRY BY CLAIM NUMBER

CLAIM NO		ABF981298		SOURCE				BENEFIT	
S NUMBER	V DATE	AMOUNT	MJ	MN	PAYEE	TAX ID	FROM	TO	
			01						
0377127	032003	1,122.00	01	00	JOHN PERKEY	EMPL	032203	040403	
0376530	031303	1,122.00	01	00	JOHN PERKEY	EMPL	030803	032103	
0375630	022703	1,122.00	01	00	JOHN PERKEY	EMPL	022203	030703	
0374825	021303	1,122.00	01	00	JOHN PERKEY	EMPL	020803	022103	
0374073	013003	1,122.00	01	00	JOHN PERKEY	EMPL	012503	020703	
0373262	011603	1,122.00	01	00	JOHN PERKEY	EMPL	011103	012403	
0372622	010203	1,122.00	01	00	JOHN PERKEY	EMPL	122802	011003	
0371736	121802	1,122.00	01	00	JOHN PERKEY	EMPL	121402	122702	
0371127	120402	1,122.00	01	00	JOHN PERKEY	EMPL	113002	121302	
0370607	112102	1,122.00	01	00	JOHN PERKEY	EMPL	111602	112902	
0369767	110702	1,122.00	01	00	JOHN PERKEY	EMPL	110202	111502	
0368946	102402	1,122.00	01	00	JOHN PERKEY	EMPL	101902	110102	
0368167	101002	1,122.00	01	00	JOHN PERKEY	EMPL	100502	101802	
0367442	092602	1,122.00	01	00	JOHN PERKEY	EMPL	092102	100402	
0366676	091202	1,122.00	01	00	JOHN PERKEY	EMPL	090702	092002	

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PF1=HELP 3=EXIT 5=TOP 6=BOTTOM 7=BWD 8=FWD

04/07 09:30 102P

CL/SS cruce (GLCRUCE) on LD116NBD 04/07/03 09:30:26 ***

MAP030 WC CHECK INQUIRY BY CLAIM NUMBER

CLAIM NO		ABF981298		SOURCE				BENEFIT	
S NUMBER	V DATE	AMOUNT	MJ	MN	PAYEE	TAX ID	FROM	TO	
			01						
0365962	082902	1,122.00	01	00	JOHN PERKEY	EMPL	082402	090602	
0365152	081502	1,122.00	01	00	JOHN PERKEY	EMPL	081002	082302	
0364403	080102	1,122.00	01	00	JOHN PERKEY	EMPL	072702	080902	
0363587	071802	1,122.00	01	00	JOHN PERKEY	EMPL	071302	072602	
0362674	070302	1,122.00	01	00	JOHN PERKEY	EMPL	062902	071202	
0361960	062002	1,122.00	01	00	JOHN PERKEY	EMPL	061502	062802	
0360772	060502	1,122.00	01	00	JOHN PERKEY	EMPL	060102	061402	
0360173	052302	1,122.00	01	00	JOHN PERKEY	EMPL	051802	053102	
0359521	050902	1,122.00	01	00	JOHN PERKEY	EMPL	050402	051702	
0358907	042502	1,122.00	01	00	JOHN PERKEY	EMPL	042002	050302	
0357894	040502	1,122.00	01	00	JOHN PERKEY	EMPL	040602	041902	
0357466	032802	1,122.00	01	00	JOHN PERKEY	EMPL	032302	040502	
0356618	031402	1,122.00	01	00	JOHN PERKEY	EMPL	030902	032202	
0355888	022802	1,122.00	01	00	JOHN PERKEY	EMPL	022302	030802	
0354920	021402	1,122.00	01	00	JOHN PERKEY	EMPL	020902	022202	

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PF1=HELP 3=EXIT 5=TOP 6=BOTTOM 7=BWD 8=FWD

04/07 09:30 102P

MAP030 WC CHECK INQUIRY BY CLAIM NUMBER

CLAIM NO ABF981298 SOURCE

S NUMBER	V DATE	AMOUNT	MJ MN	PAYEE	TAX ID	BENEFIT FROM TO
			01			
0354258	013102	1,122.00	01 00	JOHN PERKEY	EMPL	012602 020802
0353358	011702	1,122.00	01 00	JOHN PERKEY	EMPL	011202 012502
0352500	010302	1,122.00	01 00	JOHN PERKEY	EMPL	122901 011102
0351767	122001	1,122.00	01 00	JOHN PERKEY	EMPL	121501 122801
0350914	120601	1,122.00	01 00	JOHN PERKEY	EMPL	120101 121401
0349904	112001	1,122.00	01 00	JOHN PERKEY	EMPL	111701 113001
0349173	110801	1,122.00	01 00	JOHN PERKEY	EMPL	110301 111601
0348227	102601	1,122.00	01 00	JOHN PERKEY	EMPL	102001 110201
0347503	101501	1,122.00	01 00	JOHN PERKEY	EMPL	100601 101901
0340901 M	100401	1,122.00	01 00	JOHN PERKEY	EMPL	092201 100501
0345748	091301	1,122.00	01 00	JOHN PERKEY	EMPL	090801 092101
0345043	083001	1,122.00	01 00	JOHN PERKEY	EMPL	082501 090701
0344248	081601	1,122.00	01 00	JOHN PERKEY	EMPL	081101 082401
0343416	080201	1,122.00	01 00	JOHN PERKEY	EMPL	072801 081001
0342463	071901	1,122.00	01 00	JOHN PERKEY	EMPL	071401 072701

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PF1=HELP 3=EXIT 5=TOP 6=BOTTOM 7=BWD 8=FWD

04/07 09:30 102P

CL/SS cruce (GLCRUCE) on LD116N80 04/07/03 09:30:38 ***

MAP030 WC CHECK INQUIRY BY CLAIM NUMBER

CLAIM NO ABF981298 SOURCE

S NUMBER	V DATE	AMOUNT	MJ MN	PAYEE	TAX ID	BENEFIT FROM TO
			01			
0341520	070501	1,122.00	01 00	JOHN PERKEY	EMPL	063001 071301
0340579	062101	1,122.00	01 00	JOHN PERKEY	EMPL	061601 062901
0339733	061101	1,122.00	01 00	JOHN PERKEY	EMPL	060201 061501
0338707	052301	1,122.00	01 00	JOHN PERKEY	EMPL	051901 060101
0337954	051001	1,122.00	01 00	JOHN PERKEY	EMPL	050501 051801
0337057	042601	1,122.00	01 00	JOHN PERKEY	EMPL	042101 050401
0324365 M	042001	1,575.00	01 00	MARCUS MCKNIGHT I	231438531	042700 042001
0324366 M	042001	4,035.00	01 00	JOHN PERKEY	EMPL	042700 042001
0336219	041201	897.60	01 00	JOHN PERKEY	EMPL	040701 042001
0335176	032901	897.60	01 00	JOHN PERKEY	EMPL	032401 040601
0334066	031501	897.60	01 00	JOHN PERKEY	EMPL	031001 032301
0333205	030101	897.60	01 01	JOHN PERKEY	EMPL	022401 030901
0332539	021501	897.60	01 00	JOHN PERKEY	EMPL	021001 022301
0331834	020101	897.60	01 00	JOHN PERKEY	EMPL	012701 020901
0330945	011801	897.60	01 00	JOHN PERKEY	EMPL	011301 012601

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PF1=HELP 3=EXIT 5=TOP 6=BOTTOM 7=BWD 8=FWD

04/07 09:30 102P

MAP030 WC CHECK INQUIRY BY CLAIM NUMBER

CLAIM NO ABF981298 SOURCE

S NUMBER	V DATE	AMOUNT	MJ	MN	PAYEE	TAX ID	BENEFIT FROM	TO
			01					
0330067	010401	897.60	01	00	JOHN PERKEY	EMPL	123000	011201
0329570	122100	897.60	01	00	JOHN PERKEY	EMPL	121600	122900
0328655	120700	897.60	01	00	JOHN PERKEY	EMPL	120200	121500
0327747	112200	897.60	01	00	JOHN PERKEY	EMPL	111800	120100
0326930	110900	897.60	01	00	JOHN PERKEY	EMPL	110400	111700
0326008	102600	897.60	01	00	JOHN PERKEY	EMPL	102100	110300
0324980	101200	897.60	01	00	JOHN PERKEY	EMPL	100600	102000
0324109	092800	897.60	01	00	JOHN PERKEY	EMPL	092200	100500
0323524	091400	897.60	01	00	JOHN PERKEY	EMPL	090800	092100
0322885	083100	897.60	01	00	JOHN PERKEY	EMPL	082500	090700
0321754	081500	897.60	01	00	JOHN PERKEY	EMPL	081100	082400
0320744	072600	897.60	01	00	JOHN PERKEY	EMPL	072000	080200
0320117	071200	897.60	01	00	JOHN PERKEY	EMPL	070600	071900
0319154	062600	897.60	01	00	JOHN PERKEY	EMPL	062200	070500
0318440	061400	897.60	01	00	JOHN PERKEY	EMPL	060800	062100

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PF1=HELP 3=EXIT 5=TOP 6=BOTTOM 7=BWD 8=FWD

04/07 09:30 102P

CL/SS cruce (GLCRUCE) on LD116NBO 04/07/03 09:30:49 ***

MAP030 WC CHECK INQUIRY BY CLAIM NUMBER

CLAIM NO ABF981298 SOURCE

S NUMBER	V DATE	AMOUNT	MJ	MN	PAYEE	TAX ID	BENEFIT FROM	TO
			01					
0317678	053100	897.60	01	00	JOHN PERKEY	EMPL	052500	060700
0316867	051700	897.60	01	00	JOHN PERKEY	EMPL	051100	052400
0316178	050800	897.60	01	00	JOHN PERKEY	EMPL	042700	051000
0315191	041900	1,122.00	01	00	JOHN PERKEY	EMPL	041300	042600
0314395	040500	1,122.00	01	00	JOHN PERKEY	EMPL	033000	041200
0313689	032200	1,122.00	01	00	JOHN PERKEY	EMPL	031600	032900
0312741	030800	1,122.00	01	00	JOHN PERKEY	EMPL	030200	031500
0311938	022300	1,122.00	01	00	JOHN PERKEY	EMPL	021700	030100
0311037	020900	1,122.00	01	00	JOHN PERKEY	EMPL	020300	021600
0310215	012600	1,122.00	01	00	JOHN PERKEY	EMPL	012000	020200
0309399	011200	1,122.00	01	00	JOHN PERKEY	EMPL	010600	011900
0308863	122999	1,122.00	01	00	JOHN PERKEY	EMPL	122399	010500
0308037	121599	1,122.00	01	00	JOHN PERKEY	EMPL	120999	122299
0307339	120199	1,122.00	01	00	JOHN PERKEY	EMPL	112599	120899
0306482	111799	1,122.00	01	00	JOHN PERKEY	EMPL	111199	112499

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PF1=HELP 3=EXIT 5=TOP 6=BOTTOM 7=BWD 8=FWD

04/07 09:30 102P

MAP030 WC CHECK INQUIRY BY CLAIM NUMBER

CLAIM NO ABF981298 SOURCE

S NUMBER	V DATE	AMOUNT	MJ MN	PAYEE	TAX ID	BENEFIT FROM	TO
			01				
0278837	M 111099	1,122.00	01 00	JOHN PERKEY	EMPL	102899	111099
0304784	102099	1,122.00	01 00	JOHN PERKEY	EMPL	101499	102799
0303807	100599	1,122.00	01 00	JOHN PERKEY	EMPL	093099	103199
0302888	092299	1,122.00	01 00	JOHN PERKEY	EMPL	091699	092999
0302179	091099	1,122.00	01 00	JOHN PERKEY	EMPL	090299	091599
0301257	082599	1,122.00	01 00	JOHN PERKEY	EMPL	081999	090199
0300466	081199	1,122.00	01 00	JOHN PERKEY	EMPL	080599	081899
0299766	072899	1,122.00	01 00	JOHN PERKEY	EMPL	072299	080499
0298794	071499	1,122.00	01 00	JOHN PERKEY	EMPL	070899	072199
0298144	063099	1,122.00	01 00	JOHN PERKEY	EMPL	062499	070799
0297306	061699	1,122.00	01 00	JOHN PERKEY	EMPL	061099	062399
0278870	M 060999	1,122.00	01 00	JOHN PERKEY	EMPL	052799	060799
0296645	V 060999	1,122.00	01 00	JOHN PERKEY	EMPL	052799	060999
0296645	060299	1,122.00	01 00	JOHN PERKEY	EMPL	052799	060999
0295869	051999	1,122.00	01 00	JOHN PERKEY	EMPL	051399	052699

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PF1=HELP 3=EXIT 5=TOP 6=BOTTOM 7=BWD 8=FWD

04/07 09:30 102P

CL/SS cruce (GLCRUCE) on LD116NBO 04/07/03 09:31:00 ***

MAP030 WC CHECK INQUIRY BY CLAIM NUMBER

CLAIM NO ABF981298 SOURCE

S NUMBER	V DATE	AMOUNT	MJ MN	PAYEE	TAX ID	BENEFIT FROM	TO
			01				
0295037	050599	1,122.00	01 00	JOHN PERKEY	EMPL	042999	051299
0293982	041999	13,724.00	01 00	JOHN PERKEY	EMPL	091698	042899

INDEM - \$128,168.

MEDS - \$52,928.62

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PF1=HELP 3=EXIT 5=TOP 6

END OF DEDUCTIONS:10301021
04/07 09:30 102P

CERTIFICATE OF SERVICE

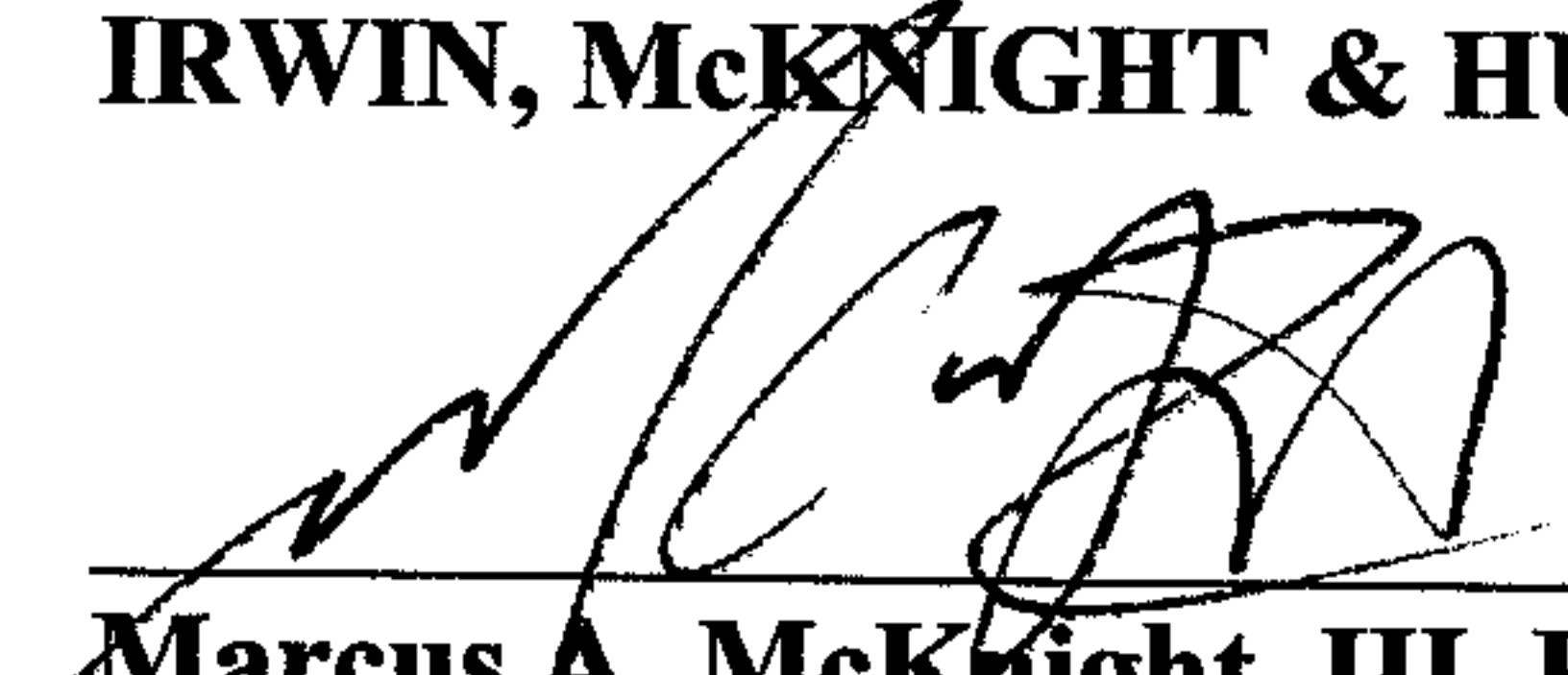
I, Marcus A. McKnight, III, Esquire, hereby certify that a copy of attached Counter Statement was served upon the following by depositing a true and correct copy of the same in the United States mail, First Class, postage prepaid in Carlisle, Pennsylvania, on the date referenced below and addressed as follows:

United States District Court
Middle District of Pennsylvania
Federal Building
228 Walnut Street
Harrisburg, PA 17108

Michael A. Farrell, Esquire
FARRELL & RICCI
4423 North Front Street
Harrisburg, PA 17110
(Attorney for ABF Freight System, Inc.)

E. Ralph Godfrey, Esquire
Godfrey & Courtney, P.C.
P.O. Box 6280
Harrisburg, PA 17112
(Attorney for Reliable Carriers and Daniel Bemben)

IRWIN, McKNIGHT & HUGHES

By: 
Marcus A. McKnight, III, Esquire
60 West Pomfret Street
Carlisle, PA 17013
(717) 249-2353
Supreme Court I.D. No. 25476

Date: April 30, 2003